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SUBMISSION BY THE FUNDRAISING INSTITUTE OF AUSTRALIA

In making a submission to the Commonwealth Statutory Cause for Action for Serious Invasion of Privacy Issues Paper, the Fund Raising Institute of Australia (FIA) makes the point that this could not have come at a worse time for charities and the Not-For-Profit sector.

The Commonwealth-led Not-For-Profit reform process is at a critical stage with five separate areas including the definition of charity, fundraising regulation and the establishment of the new ACNC under review or active consideration.

However privacy is a vital area for fundraisers as charities depend on the goodwill and generosity of Australians to deliver services and provide succour to those in need.

To do this it is necessary to raise funds by contacting members of the public by a variety of means including mail, telephone and email.

As the public benefit of these activities is recognised legislatively by measures such as an exemption from the provision of the Do Not Call Register and recognition that charities are not involved in trade or commerce for the purposes of the Australian Consumer Law.

In canvassing a statutory cause of action, little consideration appears to have been given to the operations of fundraisers and charities.

The provision of a defence such as proposed for freedom of speech would not alleviate the problem for the fundraising sector

The FIA believes that existing privacy protections are perfectly adequate in relation to the activities of fundraisers and that a statutory cause of action would unnecessarily change the compact that exists between charities and the Australian community.

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Of the reasons given in the Issues Paper in favour of such an action, the only one of direct relevance to fundraisers is data breach. Charities and Not-for-Profits hold considerable amounts of personal data.

The FIA is aware of the recent high profile data breach incidents but they do seem to have been addressed satisfactorily by the Office of the Federal Privacy Commissioner acting within the scope of the existing legislation

Had the privacy reform process established by Senator Faulkner been maintained as the FIA was anticipating, the cause of action and mandatory data breach notification would have been considered at the same time as part of the second tranche of amendments to the Privacy Act.

It is FIA's view that should there be need for more regulation to deal with data breaches, provisions should be targeted directly at the specific problem as opposed to the scatter-gun approach of a generalised cause of action.

Rob Edwards
Chief Executive Officer

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